

§ 471.2

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Director of OFCCP means the Director of the Office of Federal Contract Compliance Programs in the Department of Labor.

Director of OLMS means the Director of the Office of Labor-Management Standards in the Department of Labor.

Employee notice clause means the contract clause set forth in Appendix A that Government contracting departments and agencies must include in all Government contracts and subcontracts pursuant to Executive Order 13496 and this part.

Government means the Government of the United States of America.

Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or non-personal services. The term “personal property,” as used in this section, includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term “non-personal services” as used in this section includes, but is not limited to, the following services: utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federal financial assistance, as defined in 29 CFR 31.2.

Labor organization means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Modification of a contract means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

Order or Executive Order means Executive Order 13496 (74 FR 6107, Feb. 4, 2009).

Person means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumen-

tal, or subdivision of such a government.

Prime contractor means any person holding a contract with a contracting agency, and, for the purposes of subparts B and C of this part, includes any person who has held a contract subject to the Executive Order and this part.

Related rules, regulations, and orders of the Secretary of Labor, as used in § 471.2 of this part, means rules, regulations, and relevant orders issued pursuant to the Executive Order or this part.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or non-personal services that, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor’s obligation under any one or more contracts is performed, undertaken or assumed.

Subcontractor means any person holding a subcontract and, for the purposes of subparts B and C of this part, any person who has held a subcontract subject to the Executive Order and this part.

Union means a labor organization as defined above.

United States means the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

§ 471.2 What employee notice clause must be included in Government contracts?

(a) *Government contracts.* With respect to all contracts covered by this part, Government contracting departments and agencies must, to the extent consistent with law, include the language set forth in appendix A to subpart A of part 471 in every Government contract, other than those contracts to which exceptions are applicable as stated in § 471.3.

(b) *Inclusion by reference.* The employee notice clause need not be quoted verbatim in a contract, subcontract, or purchase order. The clause may be made part of the contract, subcontract, or purchase order by citation to 29 CFR part 471, appendix A to subpart A.

(c) *Adaptation of language.* The Director of OLMS may find that an Act of Congress, clarification of existing law by the courts or the National Labor Relations Board, or other circumstances make modification of the contractual provisions necessary to achieve the purposes of the Executive Order and this part. In such circumstances, the Director of OLMS will promptly issue rules, regulations, or orders as are needed to ensure that all future government contracts contain appropriate provisions to achieve the purposes of the Executive Order and this part.

(d) *Physical posting of employee notice.* A contractor or subcontractor that posts notices to employees physically must also post the required notice physically. Where a significant portion of a contractor's workforce is not proficient in English, the contractor must provide the notice in the language employees speak. The employee notice must be placed:

(1) In conspicuous places in and about the contractor's plants and offices so that the notice is prominent and readily seen by employees. Such conspicuous placement includes, but is not limited to, areas in which the contractor posts notices to employees about the employees' terms and conditions of employment; and

(2) Where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract. An employee shall be considered to be so engaged if:

(i) The duties of the employee's position include work that fulfills a contractual obligation, or work that is necessary to, or that facilitates, performance of the contract or a provision of the contract; or

(ii) The cost or a portion of the cost of the employee's position is allowable as a cost of the contract under the principles set forth in the Federal Acquisition Regulation at 48 CFR Ch. 1, part 31: Provided, That a position shall

not be considered covered by this part by virtue of this provision if the cost of the position was not allocable in whole or in part as a direct cost to any Government contract, and only a de minimis (less than 2%) portion of the cost of the position was allocable as an indirect cost to Government contracts, considered as a group.

(e) *Obtaining a poster with the employee notice.* A poster with the required employee notice, including a poster with the employee notice translated into languages other than English, will be printed by the Department, and will be provided by the Federal contracting agency or may be obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs. A copy of the poster in English and in languages other than English may also be downloaded from the Office of Labor-Management Standards Web site at <http://www.olms.dol.gov>. Additionally, contractors may reproduce and use exact duplicate copies of the Department's official poster.

(f) *Electronic postings of employee notice.* A contractor or subcontractor that customarily posts notices to employees electronically must also post the required notice electronically. Such contractors or subcontractors satisfy the electronic posting requirement by displaying prominently on any Web site that is maintained by the contractor or subcontractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster. The link to the Department's Web site must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers." Where a significant portion of a contractor's workforce is not proficient in English, the contractor must provide the notice required in this subsection in the language the employees speak. This requirement will

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be satisfied by displaying prominently on any Web site that is maintained by the contractor or subcontractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's Web site that contains the full text of the poster in the language the employees speak. In such cases, the Office of Labor-Management Standards will provide translations of the link to the Department's Web site that must be displayed on the contractor's or subcontractor's Web site.

§ 471.3 What exceptions apply and what exemptions are available?

(a) *Exceptions for specific types of contracts.* The requirements of this part do not apply to any of the following:

(1) Collective bargaining agreements as defined in the Federal Service Labor-Management Relations Statute, entered into by an agency and the exclusive representative of employees in an appropriate unit to set terms and conditions of employment of those employees.

(2) Government contracts that involve purchases below the simplified acquisition threshold set by Congress under the Office of Federal Procurement Policy Act. Therefore, the employee notice clause need not be included in government contracts for purchases below that threshold, provided that

(i) No agency or contractor is permitted to procure supplies or services in a manner designed to avoid the applicability of the Order and this part; and

(ii) The employee notice clause must be included in government contracts for indefinite quantities, unless the contracting agency or contractor has reason to believe that the amount to be ordered in any year under such a contract will be less than the simplified acquisition threshold set in the Office of Federal Procurement Policy Act.

(3) Government contracts resulting from solicitations issued before the effective date of this rule.

(4) Subcontracts of \$10,000 or less in value, except that contractors and subcontractors are not permitted to procure supplies or services in a manner

designed to avoid the applicability of the Order and this part.

(5) Contracts and subcontracts for work performed exclusively outside the territorial United States.

(b) *Exemptions for certain contracts.* The Director of OLMS may exempt a contracting department or agency or groups of departments or agencies from the requirements of this part with respect to a particular contract or subcontract or any class of contracts or subcontracts when the Director finds that either:

(1) The application of any of the requirements of this part would not serve its purposes or would impair the ability of the Government to procure goods or services on an economical and efficient basis; or

(2) Special circumstances require an exemption in order to serve the national interest.

(c) *Procedures for requesting an exemption and withdrawals of exemptions.* Requests for exemptions under this subsection from a contracting department or agency must be in writing, and must be directed to the Director of OLMS, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5603, Washington, DC, 20210. The Director of OLMS may withdraw an exemption granted when, in the Director's judgment, such action is necessary or appropriate to achieve the purposes of this part.

§ 471.4 What employers are not covered under this part?

(a) The following employers are excluded from the definition of "employer" in the National Labor Relations Act (NLRA), and are not covered by the requirements of this part:

(1) The United States or any wholly owned Government corporation;

(2) Any Federal Reserve Bank;

(3) Any State or political subdivision thereof;

(4) Any person subject to the Railway Labor Act;

(5) Any labor organization (other than when acting as an employer); or

(6) Anyone acting in the capacity of officer or agent of such labor organization.